

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6176

PETITION OF KAREN BRINKMANN
(Hearing held January 3, 2007)

OPINION OF THE BOARD
(Effective date of Opinion, March 29, 2007)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a two-story addition that requires a five (5) foot variance as it is within thirty-five (35) feet of the front lot line. The required setback is forty (40) feet.

Fred Johnsen, the petitioner's husband, and William Feeney, an architect, appeared with the petitioner at the public hearing.

The subject property is Lot 26, Block E, Charred Oak Estates Subdivision, located at 8017 Carita Court, Bethesda, Maryland, 20817, in the R-200 Zone (Tax Account No. 00877392).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 22.8 x 30 foot two-story addition.
2. Mr. Feeney testified that the subject property has an existing one-car garage that the petitioner proposes to expand. Mr. Feeney testified that currently a corner of the existing house is sited at the required front lot line setback and that the design of the proposed addition would be to accommodate a two-car garage that would be in harmony with other homes in the neighborhood. Mr. Feeney testified that the proposed construction would leave intact the mass of the main house to preserve the hierarchy of the house and not lose the symmetry of the main house.

3. Mr. Feeney testified that the houses in the rest of the neighborhood are sited in such a way as to accommodate new construction on those lots. Mr. Feeney testified that the petitioners' house is sited diagonally on their lot and that this orientation of their house limits new construction on the lot. Mr. Feeney testified that the uniqueness of the petitioners' lot is the inability to add new construction on the lot to the same degree as the other lots in neighborhood.
4. The petitioners testified that the uniqueness of the subject property is that it is a corner property located at the intersection of Cindy Lane and Carita Court that must meet two 40-foot front lot line setbacks. The petitioners testified that the proposed construction would be consistent and in harmony with the existing architecture of the neighborhood. The petitioners testified that the topography of the lot slopes, but that it is not extreme.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no exceptional topographical or other extraordinary conditions that are peculiar to the subject property. The Board finds that the location of the house on the subject property is not a factor the Board can take into account in evaluating the petition for a variance. (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994).

The Board notes that a corner location alone does not render a lot unique and that new construction could be built on the property without the need for a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance.

Accordingly, the requested variance of five (5) feet from the required forty (40) foot front lot line setback for the construction of a two-story addition is denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Caryn L. Hines, with Wendell M. Holloway, Catherine G. Titus and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 29th day of March, 2007.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.